

SWITZERLAND



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1. Jurisdiction	
Topic:	Advertising / Commercial law
Who:	Swiss Federal Court
When:	June 23, 2006
Published:	SIC 2/2007 page 126 ff.
What happened:	This decision of the Swiss Federal Court refers to the criteria after which the advertisement for pharmaceutical products, in this case for a pain reliever is admissible. The advertisement for pharmaceutical products only available by prescription is not only restricted by the prohibition of deceiving advertisement, furthermore it has to be in accordance with the approved official information regarding this product. The advertisement for the pain reliever "Dolo-Spedifen 400" contained sentences such as: ".the pain is already gone!", "because every minute counts", "soothes the pain already within a few minutes" and "...liberates you from pain entirely within 30 minutes". The Federal Court came to the conclusion that these explicit messages did not correspond with the official and approved information for this pain reliever, which did not contain any specific information regarding the extent and the point of time of its effect. The advertisement was therefore regarded as contradictory to the official information for the medicament and furthermore as illegitimate exaggeration.

2. Jurisdiction	
Topic:	Protection of existing trade mark refused
Who:	Eidgenössische Rekurskommission für geistiges Eigentum (Federal commission of recourse in the matter of intellectual property)
When:	August 31, 2006
Published:	SIC 1/2007 page 4
What happened:	The owner of the Swiss trade mark "okay" claimed against the registration of the identical trademark "okay". Both trade marks were destined for the commercialization of medias. A trade mark must be used to a certain extent to conserve the right of protection ("right-maintaining use"), which means minimal market cultivation within 5 years. In the present case, the owner of the existing trade mark had launched a soccer magazine named "okay". Even so, the owner of this trade mark could not prove that after the first print run in 2004, any more print runs have followed. Thus, the Eidgenössische Rekurskommission came to the conclusion, that in the period of 5 years after its registration, neither the trade mark has been used regularly nor had it had a noteworthy frequency of runs. As a consequence, the sufficient and "right-maintaining" use could not be affirmed and the trade mark could not be protected.

3. Jurisdiction	
Topic:	Misleading trade mark
Who:	Swiss Federal Court
When:	September 8, 2006
Published:	SIC 3/2007 page 204 ff.
What happened:	A trade mark is according to the Swiss law regarded as misleading, if it contains or consists of a geographical designation and wrongly suggests that the product

	<p>belonging to the trade mark has been produced at a specific location. Such a trade mark can only be registered, if it is true (i.e. the caused impression is true) or if the geographic designation is evident to be a fantasy name resp. trade mark. The decisive criteria regarding the misleading character of the trade mark is, if the trade mark evocates directly or indirectly a specific idea regarding the location or country of provenience / production.</p> <p>The present case is about the registration of the trade mark “Colorado” which was intended to be used for products sold in Switzerland that have not been produced in or imported from the United States. This trade mark is according to the Swiss Federal Court misleading, as it causes the impression, that the products had been produced in Colorado, United States. This impression is being enforced by the picture of a mountain landscape as a part of the trade mark, which could be associated to the Rocky Mountains, that are quite well known to the Swiss public as a holiday destination. Therefore, this trade mark is excluded from the trade mark-protection and cannot be registered.</p>
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4 Jurisdiction	
Topic:	Similarity of trade marks / Danger of confusion
Who:	Eidgenössische Rekurskommission für geistiges Eigentum (Federal commission of recourse in the matter of intellectual property)
When:	July 5, 2006
Published:	SIC 11/2006 page 761 ff.
What happened:	<p>According to the Swiss law, trade marks cannot be protected, if they are similar to an already existent trade mark for identical or congeneric products or services. The similarity of trade marks is defined by the phonetic impression, the visual impression and contingently the signification of the word resp. the trade mark. If one of these defining aspects can be affirmed, the trade mark is considered to be similar and will not be protected.</p> <p>In the present case, the Eidgenössische Rekurskommission had to judge the similarity of the Swiss trade mark “Mc Lake” and the trade mark “McDonald’s” on the one hand and of the trade marks “Mc Lake” and “Fish Mac” on the other hand.</p> <p>In respect of the trade mark “McDonalds”, according to the appeal commission the prefix “Mc” does not cause a specific association to the trade mark “McDonalds” as it is well known to be a part of Scottish family names and thus used within many different areas (for example politics, economics, sports, entertainment, etc). The phonetic and visual similarity is to be denied as well.</p> <p>As far as the alleged similarity of “Mc Lake” and “Fish Mac” is concerned the Eidgenössische Rekurskommission denied the similarity of the trade marks regarding their phonetic and visual impression. Furthermore, a similarity in respect of the signification of the word “fish” can be excluded for the fact that the word “fish” is a declaration of an object and therefore a common property.</p>

5. Jurisdiction	
Topic:	Prohibition of spam / revision of article 3 UWG (Swiss law against unfair competition) and of article 45 a FMG (Swiss law of telecommunications)
Who:	Swiss Federal Council
When:	April 1, 2007
Published:	Corpus juris
What happened:	The revised articles 3 UWG and 45a FMG entered into force as from the first of April 2007. As a measure to protect involuntary recipients or transmitters, mass advertising (spam) is prohibited categorically. According to this revisions, automatically generated mass advertising via e-mail, fax, answering machine,

sms or mms is legal only on condition that the recipient has agreed explicitly to this advertising (opt-in). Commercial mailing of spam can be penalized by a fine or imprisonment.

A corresponding resp. non-literal translation of the new art. 3 UWG would be:

As unfair competition is regarded:

Sending unsolicited mass advertising by means of telecommunications without having asked in advance for the agreement of the recipient, without having informed in advance about the correct address of the sender, or without having indicated in advance the recipients possibility to decline the advertising free of charge. The sending of unsolicited mass advertising is not regarded as unfair competition in case the recipient is a former client of the sender who therefore already has the recipients contact details and if the advertising is referring to similar products or services of the sender.